

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CR NO. 19-4440-MV
)	
v.)	
)	
NICHOLOUS PHILLIPS,)	
)	
Defendant.)	

UNITED STATES' MOTION REQUESTING RULE 17(c) SUBPOENA

Pursuant to Federal Rule of Criminal Procedure 17(c), the United States seeks leave to obtain information in the form of multimedia data in advance of trial through one subpoena duces tecum. Specifically, the United States requests permission to issue one subpoena duces tecum to the Albuquerque Police Department for all lapel camera video, dispatch and radio traffic, and all other multimedia relating to the November 15, 2019, incident concerning Nicholous Phillips in Albuquerque, New Mexico. The United States seeks all records in the possession of the Albuquerque Police Department relative to Defendant Nicholous Phillips.

In *United States v. Nixon*, 418 U.S. 683 (1974), the Supreme Court set forth the prerequisite showings necessary to obtain a subpoena for the pre-trial production of information pursuant to Rule 17(c) and within its scope. The Court stated:

[I]n order to require production prior to trial, the moving party must show: (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general "fishing expedition."

Nixon, 418 U.S. at 699-700. As set forth below, the United States' request meets each of these requirements.

1. Defendant Nicholous Phillips was indicted on one count of being a felon in possession of a firearm and ammunition and one count of possession with intent to distribute a controlled substance, to wit: methamphetamine, on or about November 15, 2019. Doc. 4.

2. Trial in this matter is presently scheduled for January 27, 2020 before the Honorable Martha Vasquez.

3. The United States intends to introduce into evidence multimedia from the Albuquerque Police Department officers on scene during Nicholous Phillips' arrest on November 15, 2019.

4. The United States requests that the Court issue a subpoena directed to the Albuquerque Police Department to produce all lapel camera video, dispatch and radio traffic, and all other multimedia relating to the November 15, 2019, incident concerning Nicholous Phillips, DOB xx-xx-1979, SSN xxx-xx-2061, that took place at 10012 Cochiti Road SE in Albuquerque, New Mexico.

5. The issuance of this subpoena will facilitate obtaining information prior to trial and allow for both parties to utilize it before its production in court. This multimedia data could be obtained by the issuance of a subpoena duces tecum at trial but that would not allow for the full utilization of the information by both parties.

6. The multimedia data is relevant to prove the underlying charges of felon in possession of a firearm and ammunition and possession with intent to distribute a controlled substance, to wit: methamphetamine, and the United States intends to use it as part of its proof. *Nixon*, 418 U.S. at 699-700. Gaining access to this information is critical in order to assess the

scene as it unfolded that evening and the Defendant's actions which underlie the two charges.

7. The information the United States seeks is in the custody of the Albuquerque Police Department and are not obtainable prior to trial, absent undue delay, without a subpoena. *Id.* Specifically, the United States requests the above-specified multimedia data from the following officers who were present on scene:

Christopher Ferguson
Emmanuel Solis
Jonathan Sanchez
Tanner Tixier
Richard Evans
Luke Languit
David Small
Aaron Vargas
Ian Ross
Christopher Duda
Michele Ackerson
Gerardo Gamboa-Aniles
Brenda Molloy

8. The United States' efforts to secure this multimedia data will assist both parties to properly prepare for trial and avoid any unnecessary delay during trial. *Id.* Consequently, the pre-trial production of this information is necessary. Until the United States gains access to the requested lapel camera video, dispatch and radio traffic, and all other multimedia, it may have an incomplete understanding of the scene and Defendant's actions which led to his arrest. Additional delay will be avoided only through the issuance of the requested subpoena.

9. The United States is seeking to obtain this multimedia as discovery in good faith. *Id.* The specific information is directly relevant to the issues currently pending before this Court. All information obtained will be useful to both the United States and Defendant in their preparation for any evidentiary hearings and the trial.

10. The proposed form of the subpoena is attached as Government's Exhibit 1.

11. Counsel for Defendant, Kari Converse, was contacted on December 12, 2019, and she concurs with this Motion.

WHEREFORE, the United States respectfully requests that this Court issue an order permitting the United States to issue a subpoena pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure to the Albuquerque Police Department for any and all lapel camera video, dispatch and radio traffic, and all other multimedia relating to the November 15, 2019, incident concerning Nicholous Phillips, DOB xx-xx-1979, SSN xxx-xx-2061, that took place at 10012 Cochiti Road SE in Albuquerque, New Mexico. The United States further requests that this Court grant that the production of this information be made to the United States within five business days of the issuance of the subpoena.

Respectfully submitted,
JOHN C. ANDERSON
United States Attorney

/s/ Jaymie L. Roybal
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I HEREBY CERTIFY that I filed the foregoing pleading electronically through the CM/ECF system which caused defense counsel, Kari Converse, to be served by electronic means, as reflected on the Notice of Electronic Filing as indicated therein on December 12, 2019.

/s/
Jaymie L. Roybal
Assistant United States Attorney